

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #05	CCRB Case #: 201907564	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 08/12/2019 6:15 PM	Location of Incident: 67th Precinct stationhouse	18 Mo. SOL 9/29/2021	Precinct: 67		
Date/Time CV Reported Mon, 08/12/2019 10:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/26/2019 11:05 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Pierre Pradieu	20943	940593	067 PCT
2. POM Ryan Barba	29699	964908	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michael Toscano	04883	951348	067 PCT
2. POM Domonic Gibson	19664	958628	SRG 3
3. POM Jonathan Cruz	24463	936408	067 PCT
4. SGT Kyong Kim	02765	938772	067 PCT
5. SGT Richard Lynn	04628	954082	067 PCT
6. POM Milton Macias	31958	940404	067 PCT
7. POM Caner Sezer	25291	951236	067 PCT
8. POM Christian Perez	14888	966266	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ryan Barba	Abuse: Police Officer Ryan Barba threatened § 87(2)(b) with the use of force.	
B.POM Pierre Pradieu	Force: Police Officer Pierre Pradieu used physical force against § 87(2)(b)	
C.POM Pierre Pradieu	Force: Police Officer Pierre Pradieu hit § 87(2)(b) against the ground.	
D.POM Pierre Pradieu	Force: Police Officer Pierre Pradieu used physical force against § 87(2)(b)	

Case Summary

On August 12, 2019, Sergeant Michael Toscano of the 67th Precinct called IAB to report a use-of-force incident on behalf of an in-custody arrestee, § 87(2)(b) generating original log § 87(2)(b). The CCRB received this complaint from IAB on August 26, 2019.

On August 12, 2019, at approximately 6 p.m., § 87(2)(b) was detained in a holding cell at the 67th Precinct stationhouse, following his arrest for various offenses (**Board Review 01**). From inside the cell, § 87(2)(b) used his basketball jersey to obtain one of his shoes outside the cell, which the officers had previously confiscated. Police Officers Pierre Pradieu, Caner Sezer, and Ryan Barba, all from the 67th Precinct, entered the cell. PO Barba pointed his Taser at § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)) while PO Sezer and PO Pradieu removed his shoe. § 87(2)(b) put his jersey back on. PO Pradieu briefly exited the cell before re-entering it, pushing § 87(2)(b) up against the wall, and taking him down to the ground (**Allegation B: Force**, § 87(2)(g)). Seconds after taking § 87(2)(b) to the ground, PO Pradieu grabbed § 87(2)(b) by the front of his basketball jersey, lifted him off of the ground to about knee-level, and then struck him against the ground (**Allegation C: Force**, § 87(2)(g)). The officers stood § 87(2)(b) up and rear-handcuffed him. As the officers escorted him out of the cell, § 87(2)(b) fell to the ground of his own accord. PO Pradieu grabbed the chain link of § 87(2)(b) handcuffs and carried him face-down by that chain to another cell (**Allegation D: Force**, § 87(2)(g)). § 87(2)(b) experienced back pain and sustained contusions to his mid-back and left ankle, and he was later transported to a hospital while still in custody.

The investigation obtained BWC footage from § 87(2)(b) arrest which is unrelated to the portion of the incident under investigation, BWC footage from his ambulance ride to the hospital (**Board Review 02**, summarized at **Board Review 03**), and surveillance footage from the stationhouse which depicts the incident in its entirety (**Board Review 04–07**, summarized at **Board Review 08**). All references to video evidence in this report use the time stamp in the video player, rather than any on-screen clocks embedded in the footage itself.

This case was reassigned from Inv. Faria Tasnim to Inv. Conor O'Shea on September 12, 2020.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Ryan Barba threatened § 87(2)(b) with the use of force.

It is undisputed that PO Barba pointed his Taser at § 87(2)(b) inside the cell. It is further undisputed that § 87(2)(b) was not fighting with officers or actively resisting when PO Barba pointed a Taser at him.

The investigation obtained a brief phone statement from § 87(2)(b) but he became uncooperative before he could provide a full, in-person statement (**Board Review 09**). § 87(2)(b) did not mention this portion of the incident in his telephone statement. There were two other arrestees in the holding cell—§ 87(2)(b) and § 87(2)(b) but the investigation was only able to reach § 87(2)(b). § 87(2)(b) refused to provide an in-person statement and did not mention this conduct in his brief telephone statement (**Board Review 10**).

Although the investigation was unable to obtain a sworn statement from any civilians, the investigation was still able to analyze PO Barba's conduct given the comprehensive video footage.

The surveillance footage from the stationhouse shows that officers confiscated § 87(2)(b) sneakers while he was lodged in a multi-defendant holding cell. For this particular portion of the incident, the best footage angle can be found at **Board Review 06** between 08:15 and 12:58 (other angles at **Board Review 04, 05, 07** with same timestamps). § 87(2)(b) later removed his basketball jersey and attempted to fish for his sneaker using the jersey through the cell bars. After this did not work, § 87(2)(b) banged on the concrete wall of the cell with his hands and kicked the wall with his feet. § 87(2)(b) resumed fishing for his sneaker with his jersey and eventually

obtained one sneaker, put it on, and began pacing. PO Pradieu opened the cell door and entered with PO Sezer. PO Barba followed behind them with a Taser already in hand. PO Barba pointed the Taser at § 87(2)(b) as PO Pradieu and PO Sezer removed the sneaker from his foot. The footage shows that § 87(2)(b) never attacked the officers, resisted, or tried to flee. After PO Sezer threw the shoe out of the cell, PO Barba briefly lowered the Taser before pointing it at § 87(2)(b) again. The officers then left the cell and locked the door.

PO Barba (**Board Review 11**) did not have a strong recollection of this incident as it happened over a year before his CCRB interview. PO Barba acknowledged pointing his Taser at § 87(2)(b) after reviewing the surveillance footage. PO Barba testified that he did not intend to discharge the Taser, and that he did not even think that § 87(2)(b) needed to be Tasered at the time he pointed it at him. Instead, PO Barba pointed the Taser at § 87(2)(b) solely because he wanted to have a “clean shot” at § 87(2)(b) in the event that at some hypothetical point in the future, a Taser discharge became necessary to protect the other officers in the cell. PO Barba acknowledged that § 87(2)(b) was not “fighting with somebody” at the time.

PO Pradieu (**Board Review 12**) did not describe § 87(2)(b) as resisting or otherwise causing any safety concerns during the time period relevant to this allegation. PO Pradieu never feared for his own safety during this interaction with § 87(2)(b) in the holding cell.

NYPD Patrol Guide Procedure 221-08 (Board Review 13) permits the use of a Taser only “against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.” Active resisting means “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Active aggression means the “threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.”

The footage shows that § 87(2)(b) was not “actively resisting” or “exhibiting active aggression” when PO Barba pointed the Taser at him. Indeed, the footage shows that § 87(2)(b) did not resist or pose a safety risk to anyone in the holding cell at the time PO Barba pointed the Taser at him. PO Barba acknowledged that the possibility of him needing to use a Taser against § 87(2)(b) to protect other officers was purely hypothetical, and that he did not have sufficient reason to believe § 87(2)(b) posed a safety threat at that time. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation B—Force: Police Officer Pierre Pradieu used physical force against § 87(2)(b).

Allegation C—Force: Police Officer Pierre Pradieu hit § 87(2)(b) against the ground.

It is undisputed that § 87(2)(b) obtained one sneaker from outside the cell by fishing for it with his basketball jersey, and that there was some disagreement between PO Pradieu and § 87(2)(b) regarding how § 87(2)(b) should wear his basketball jersey while in the cell.

§ 87(2)(b) acknowledged in his brief phone statement that he did not want to give PO Pradieu his jersey and that this led to a physical altercation with the officers.

In his brief telephone statement, § 87(2)(b) acknowledged that § 87(2)(b) was upset and angry. § 87(2)(b) further recounted that the officers “went crazy” on § 87(2)(b) and used force against him, which he did not further describe, in what § 87(2)(b) perceived to be an unnecessary over-reaction for the dispute over the sneaker.

The stationhouse footage (best angles at **Board Review 04, 05, and 06**, relevant portion for this allegation between 12:58 and 14:38; other angle at **Board Review 07** with same timestamps) shows that the officers briefly left the cell once they removed § 87(2)(b) shoe. § 87(2)(b) slung his basketball jersey over his shoulder and initially did not put it on fully. PO Pradieu began re-

entering the cell, and § 87(2)(b) fully donned the jersey. PO Pradieu moved § 87(2)(b) backwards into the cell and then put him chest-first up against the side wall of the cell. PO Pradieu pulled on § 87(2)(b) jersey from behind, causing § 87(2)(b) to stumble backwards and away from the wall. PO Pradieu took § 87(2)(b) to the ground backwards, causing him to land flat on his back. § 87(2)(b) was not attacking the officers and did not appear to be resisting during this time. Once § 87(2)(b) was on the ground, PO Pradieu stood above him with § 87(2)(b) body between his legs. PO Pradieu grabbed § 87(2)(b) by the front of his basketball jersey, picked § 87(2)(b) body up to about knee height, and then slammed him down against the ground. After some time, the officers were able to remove § 87(2)(b) basketball jersey. He stood up and the officers later rear-handcuffed him.

In his phone statement, § 87(2)(b) alleged unspecified injuries to his back and ankle as a result of the incident. Although the investigation was unable to obtain § 87(2)(b) medical records due to his lack of cooperation, there is sufficient contemporaneous NYPD documentation to ascertain at least some of the injuries § 87(2)(b) sustained. The ISAR (**Board Review 14**) and Medical Treatment of Prisoner Report (**Board Review 15**) note that § 87(2)(b) complained of back pain and was transported by ambulance to § 87(2)(b). According to the ISAR, the treating physician reported that § 87(2)(b) complained of back pain and ankle pain as a result of being forced onto the ground and being put in ankle shackles. PO Pradieu's TRI report (**Board Review 16**) further notes that § 87(2)(b) sustained significant contusions, which PO Pradieu specified were the result of intentional actions by officers. The IAB log (**Board Review 17**) clarifies that these contusions were contusions to § 87(2)(b) mid-back and left ankle. Given the circumstances of these injuries, the investigation credits that § 87(2)(b) sustained a contusion and pain to his mid-back area as a result of PO Pradieu's forcible takedowns, and a contusion to his ankle as a result of the subsequent ankle-shackling.

Captain Elton Cohn of PSA1 was the Duty Captain at the time of the incident. He ran the call-out investigation, during which he conducted non-recorded interviews of § 87(2)(b), § 87(2)(b), § 87(2)(b) PO Pradieu, and Sgt. Toscano. Captain Cohn wrote in the ISAR (**Board Review 14**) that § 87(2)(b) and § 87(2)(b) said § 87(2)(b) would not listen to the officers. The ISAR further notes that § 87(2)(b) said § 87(2)(b) was combative and violent regarding his sneakers, and that § 87(2)(b) said § 87(2)(b) was mad about his sneakers. The ISAR summarized Sgt. Toscano and PO Pradieu's interviews by noting that § 87(2)(b) was yelling at the officers after they removed his shoe and that he was "violent and combative" throughout the incident. The ISAR further notes that PO Pradieu feared that § 87(2)(b) would attack him and used a forcible takedown to subdue § 87(2)(b) as a self-protection measure.

PO Pradieu's TRI report (**Board Review 16**) only lists one type of resistance by § 87(2)(b) "other," which PO Pradieu specified was, "Tensing up in regard to Patrol Guide 221," ostensibly referring to the use-of-force Patrol Guide Procedures in the 221 series. PO Pradieu noted in the TRI report that he did not suspect § 87(2)(b) to be intoxicated by alcohol, using drugs, or emotionally disturbed. PO Pradieu acknowledged in his TRI report using a forcible takedown, but only listed one reason for doing so: "overcome resistance or aggression." PO Pradieu answered "no" in the boxes that asked whether he used force for defense of self, defense of members of the public, defense of other officers, stop self-inflicted harm, fleeing suspect, or subject armed with weapon.

In his CCRB interview, PO Pradieu (**Board Review 12**) testified that after he re-confiscated § 87(2)(b) shoe, § 87(2)(b) placed his jersey "halfway" around his neck, which PO Pradieu believed meant he might try to hang himself with the jersey. § 87(2)(b) did not say or do anything else to make PO Pradieu think that he intended to harm himself with the jersey. PO Pradieu told § 87(2)(b) several times to take his jersey off or to put it on properly. PO Pradieu entered the cell and guided § 87(2)(b) to the rear wall of the cell and reiterated his command to either take the jersey off or put it fully on. § 87(2)(b) responded by saying, "Fuck you," and then tensed up for approximately two seconds by clenching his shoulders.

When PO Pradieu viewed the surveillance footage, he noted that the portions of the video showing § 87(2)(b) with the jersey simply slung over one of his shoulders were what he was referring to by § 87(2)(b) having the jersey “halfway” around his neck.

PO Pradieu initially described that he and § 87(2)(b) went down to the floor together by stating, “Somehow, we fell.” Later, however, PO Pradieu clarified that he deliberately took § 87(2)(b) down to the ground in order to remove the jersey. PO Pradieu believed he “had no choice” but to take § 87(2)(b) to the ground. PO Pradieu acknowledged that he only “gave” § 87(2)(b) approximately two seconds to comply with his command after guiding him towards the rear wall of the cell before he brought him to the ground. When asked to describe what § 87(2)(b) was doing physically while PO Pradieu took the jersey off, PO Pradieu stated that § 87(2)(b) was acting like “an asshole.” When PO Pradieu’s legal representative suggested that by “asshole” PO Pradieu really meant “noncompliant,” PO Pradieu agreed with that recharacterization. § 87(2)(b) was noncompliant, PO Pradieu explained, insofar as he refused either to take the jersey off or to wear it properly. While on the ground, § 87(2)(b) repeatedly said, “No,” when PO Pradieu told him to give up the jersey. § 87(2)(b) continued “clenching” his shoulders while on the ground but did not resist in any other way.

PO Pradieu initially described the incident without any reference to him picking § 87(2)(b) up off of the ground and then hitting him against the ground. When asked directly whether he did those actions, PO Pradieu acknowledged that he knew the above-mentioned video existed as a result of the Duty Captain’s initial call-out investigation. However, PO Pradieu said he had no independent recollection of having done what the video depicts him doing with respect to picking § 87(2)(b) off of the ground and hitting him against the ground. When asked to account for why he did this to § 87(2)(b) PO Pradieu only stated that he and § 87(2)(b) were both frustrated. PO Pradieu was frustrated by trying to obtain the basketball jersey from § 87(2)(b) PO Pradieu gave no other reasons for this action besides being frustrated. PO Pradieu confirmed that he never believed he was in danger of being harmed by § 87(2)(b) and that he was more concerned about § 87(2)(b) annoying the other prisoners detained in the holding cell with him.

Captain Cohn concluded his call-out investigation by determining, as reflected in the ISAR, that PO Pradieu used the “minimal amount of force in controlling the subject § 87(2)(b) who repeatedly engaged in a pattern of violent behavior and refused to follow orders.” Accordingly, Captain Cohn found that PO Pradieu did not violate NYPD policy during the incident. The investigation does not credit Captain Cohn’s assessment in the ISAR that § 87(2)(b) “engaged in a pattern of violent behavior” during the incident. Although § 87(2)(b) behavior was disruptive and his demeanor at times agitated, the footage is not consistent with him acting “violently” towards any officer before PO Pradieu used force against him. And although there was some dispute between § 87(2)(b) and PO Pradieu over his jersey, the footage shows that he did put the jersey on as PO Pradieu entered the cell—apparently complying with PO Pradieu’s commands to either put the jersey on or take it off. The investigation therefore does not credit the ISAR’s blanket assessment that § 87(2)(b) “refused to follow orders.”

The video also does not support PO Pradieu’s assessment that § 87(2)(b) was putting the jersey around his neck in a manner that would raise a reasonable concern he might hang himself with it. There was no indication he was going to use it that way, and his behavior in how he held his jersey was entirely innocuous. Accordingly, the investigation discredits that PO Pradieu reasonably believed that he needed to remove the jersey from § 87(2)(b) because it posed a risk to his safety.

NYPD Patrol Guide Procedure 221-01 (Board Review 18) authorizes the use of force “when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.” Patrol Guide Procedure 221-01 also specifically prohibits the use of any level of force to punish or retaliate against a subject.

§ 87(2)(g)

§ 87(2)(b) posed no physical threat to PO Pradieu, himself, or any other person. He never assaulted or attempted to assault anyone. As described above, the investigation discredited PO Pradieu's assessment that § 87(2)(b) use of the jersey raised a reasonable concern that he might hang himself with the jersey. He simply slung it over his shoulder in a normal, non-dangerous manner. By virtue of his detainment in the holding cell, § 87(2)(b) had already been searched multiple times and dispossessed of any dangerous or prohibited objects. § 87(2)(b) made no attempt to escape custody, nor would he have been able to do so, given that he was already detained inside of a holding cell within a secure police facility as several officers blocked the only exit. Moreover, the footage showed that § 87(2)(b) did comply with PO Pradieu's command and fully donned the jersey right before PO Pradieu entered the cell.

§ 87(2)(g)

§ 87(2)(g)

Notably, PO Pradieu did not even attempt to offer a law enforcement justification. By his own testimony, PO Pradieu struck § 87(2)(b) against the ground solely out of his frustration with § 87(2)(b) whom PO Pradieu described as acting like an "asshole." § 87(2)(g)

Allegation D—Force: Police Officer Pierre Pradieu used physical force against § 87(2)(b)

It is undisputed that after removing § 87(2)(b) jersey, PO Pradieu and other officers removed § 87(2)(b) from the larger holding cell and lodged him in a smaller, single-occupancy cell.

The stationhouse footage (best angle at **Board Review 05** and **04**, relevant portion for this allegation between 15:54 and 16:15) shows that § 87(2)(b) fell face-first to the ground as the officers led him out of the holding cell. It is apparent from the footage that § 87(2)(b) deliberately fell to the ground. PO Pradieu picked § 87(2)(b) off of the ground first by grabbing the chain link of his handcuffs and then carried § 87(2)(b) out of the holding cell area with another officer by continuing to hold onto the chain link of the handcuffs. The footage also shows that § 87(2)(b) was not attempting to flee, did not make any movements to assault anyone, and was not actively resisting in any way as PO Pradieu carried him by the handcuff chain link. See **Board Review 19** for a series of screenshots that show PO Pradieu lifting and carrying § 87(2)(b) bodyweight by the chain link of the handcuffs.

PO Pradieu initially testified in his CCRB interview (**Board Review 12**) that he guided § 87(2)(b) out of the cell and that § 87(2)(b) walked of his own accord to the single occupancy holding cell. Upon reviewing the relevant portion of footage, PO Pradieu stated that he carried § 87(2)(b) out of the main holding cell because he refused to comply with commands to get up on his own. PO Pradieu said this footage makes it look like he was holding the handcuff chain, but he was actually holding § 87(2)(b) by the upper arm. However, upon reviewing the relevant portion of

footage from a different angle (**Board Review 04**), PO Caille acknowledged that he was, in fact, holding onto the handcuffs' chain link as well. PO Pradieu clarified that he was not "pulling" on the chain, but rather just "bracing" with it.

The surveillance footage and associated screenshots are unambiguous and warrant discrediting PO Pradieu's testimony that he was not "pulling" on the chain link while carrying § 87(2)(b) but merely "bracing" with it. Under these circumstances, PO Pradieu's attempt to distinguish "pulling" versus "bracing" is a distinction without a difference. PO Pradieu held § 87(2)(b) bodyweight up using the chain link of the handcuffs, as the video shows. The investigation further determined that by carrying § 87(2)(b) in this manner, PO Pradieu applied physical force to § 87(2)(b) given the physical pressure it exerted on § 87(2)(b) body through the handcuffs and the significant risk of injury that this maneuver and positioning posed to § 87(2)(b).

NYPD Patrol Guide Procedure 221-01 (Board Review 18) prohibits the use of "any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault." NYPD Patrol Guide Procedure 212-08 (Board Review 13) defines active resisting as "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody."

§ 87(2)(g) § 87(2)(b) § 87(2)(b) § 87(2)(b) But the physical force PO Pradieu applied to § 87(2)(b) through lifting and carrying him *by the chain of the handcuffs* while face-down and rear-cuffed, § 87(2)(b). The Patrol Guide prohibits using any level of force against handcuffed subjects, with only a few limited exceptions: "to prevent injury, escape, or to overcome active physical resistance or assault." § 87(2)(b) was already in police custody and rear-handcuffed within a secure NYPD facility while surrounded by several other officers, so he posed no risk of escape or injury, nor was he assaulting anyone. The Patrol Guide does not allow the use of force against handcuffed prisoners simply to overcome passive resistance. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint in which § 87(2)(b) has been named a complainant or victim (**Board Review 20**).
- PO Pradieu has been a member of service for 15 years and has been named a subject in seven other CCRB complaints and 10 other allegations, none of which was substantiated. § 87(2)(g)
- PO Barba has been a member of service for three years and has been named a subject in one other CCRB complaint and three other allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 6, 2020, the NYC Comptroller's Office has no record of any Notice of Claim regarding this incident (**Board Review 21**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: #05

Investigator:	<u>Conor Seamus O'Shea</u> Signature	<u>Investigator Conor S. O'Shea</u> Print Title & Name	<u>June 30, 2021</u> Date
Squad Leader:	<u>Daniel Giansante</u> Signature	<u>IM Daniel Giansante</u> Print Title & Name	<u>June 30, 2021</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date